

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN P. GARZA,

Plaintiff,

v.

BG RETAIL LLC d/b/a/ Famous
Footwear,

Defendant.

Case No. 1:22-cv-01051-JLT-CDB

**ORDER TO SHOW CAUSE WHY
SANCTIONS SHOULD NOT BE
IMPOSED FOR PLAINTIFF'S FAILURE
TO COMPLY WITH COURT ORDERS**

Doc. 22

THREE-DAY DEADLINE

The scheduling order in this matter, entered December 9, 2022, required the parties to appear for a mid-discovery status conference on May 17, 2023, and to file a joint report addressing specified topics at least one week in advance of the conference. (Doc. 20, p. 3). The parties timely filed their joint report on May 10, 2023, in which they outlined a series of issues related to Plaintiff's reported inability or unwillingness to comply with Defendant's discovery requests. (Doc. 21). Thereafter, on May 12, 2022, the Courtroom Deputy Clerk emailed to counsel for both parties Zoom videoconference connection information for the upcoming mid-discovery status conference.

Counsel for Plaintiff failed to appear at the mid-discovery status conference (Doc. 22), failed to provide any notice to the Court in advance of his anticipated absence, failed to respond to email inquiries from the Court while it was convened with Counsel for Defendant awaiting

1 Plaintiff's appearance, and during the seven hours following the conference, has not affirmatively
2 communicated any information to the Court concerning his absence.

3 Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with these Rules
4 or with any order of the Court may be grounds for imposition by the Court of any and all
5 sanctions . . . within the inherent power of the Court." The Court has the inherent power to
6 control its docket and may, in the exercise of that power, impose sanctions where appropriate,
7 including dismissal of the action. *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir.
8 2000).

9 Plaintiff's counsel failed to comply with the Court's order to appear for the mid-discovery
10 status conference, and through his misconduct, is preventing the Court from effectively managing
11 its docket. Accordingly, **IT IS HEREBY ORDERED**, no later than **May 22, 2023**, counsel for
12 Plaintiff **SHALL** show cause in writing why sanctions should not issue for his failure to comply
13 with the scheduling order.

14 The parties' joint mid-discovery status report – the representations within which the Court
15 presumes to be accurate given Counsel for Plaintiff's signature on the document – portrays a
16 concerning characterization of Plaintiff's lack of diligence in failing to respond to Defendant's
17 discovery demands. For instance, Plaintiff's responses to certain written discovery were due to
18 be provided to Defendant on March 24, 2023. More than ten days passed and Plaintiff had
19 neither responded nor provided Defendant any update about the status of his outstanding
20 responses. Plaintiff thereafter offered an estimated time by which he intended to respond, but that
21 date, too, lapsed, requiring Defendant several days later to follow-up.

22 While the Court is aware from the parties' joint report that Plaintiff's medical condition
23 did and may continue to inhibit his ability to participate in the discovery process, the Court does
24 not presently have sufficient information to assess the nature and scope of any possible
25 misconduct.

26 Accordingly, **IT IS FURTHER ORDERED** that Plaintiff's counsel include in his written
27 response to the Order to Show Cause answers to the following questions:

28 (1) On what dates has Counsel for Plaintiff attempted to interact with Plaintiff in connection with

1 responding to Defendant's discovery demands?

2 (2) On what date did Plaintiff enter the hospital?

3 (3) What is the nature of Plaintiff's incapacitation that he is unable to participate with counsel in
4 responding to written discovery demands?

5 (4) Is Plaintiff currently hospitalized or incapacitated to the extent he remains unable to assist
6 counsel respond to written discovery demands?

7 (5) When does Plaintiff intend to respond to the written discovery demands?

8 (6) When does Plaintiff intend to propound written discovery?

9
10 IT IS SO ORDERED.

11 Dated: May 17, 2023


UNITED STATES MAGISTRATE JUDGE